

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Joshua Mellin,

Plaintiff,

v.

Complex Media, Inc.,

Defendant.

Case No.:

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Joshua Mellin (“Mellin”), by his attorney Brian J. Beck of Zuber Lawler LLP, complains against Defendant Complex Media, Inc. (“Defendant”) as follows:

NATURE OF THE ACTION

1. This is an action for willful infringement of multiple copyrights owned by Joshua Mellin, a Chicago-based freelance photographer, by Defendant, a sophisticated online media and entertainment company with an extensive online media presence.

2. Specifically, this case concerns a set of four photographs of entertainer Kanye West taken and copyrighted by Mellin, which Defendant subsequently copied and posted to its Instagram account without permission and without payment. Defendant has a history of infringing Mellin’s copyrighted photographs, and has continued to do so despite receiving numerous warnings.

3. Mellin accordingly brings this lawsuit for copyright infringement under 17 U.S.C. § 101, *et seq*, seeking equitable and monetary relief to remedy the substantial harm he has sustained as a result of Defendant’s unlawful, willful, and repeated acts of infringement.

THE PARTIES

4. Plaintiff Joshua Mellin is an individual and citizen of the State of Illinois and the United States, who resides in Chicago, Illinois.

5. On information and belief, Defendant Complex Media, Inc. is a Delaware corporation, having its principal place of business at 229 West 43rd Street, New York, New York.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this Complaint for federal copyright infringement by virtue of 28 U.S.C. §§ 1331 and 1338.

7. On information and belief, personal jurisdiction in this District is proper because Defendant's principal place of business is in this District.

8. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

9. Joshua Mellin is a freelance photographer who lives in Chicago, Illinois. He has developed a distinctive reputation for his photography, having been recognized as the Best Photographer in Chicago by Chicago Reader Magazine in 2016, being recognized by TimeOut magazine as maintaining one of Chicago's best Instagram accounts, and being featured by national media including CNN, the New York Times, People Magazine, and Rolling Stone.

10. On or about February 6, 2022, Mellin published a photograph he created of entertainer Kanye West speaking with a young fan at a basketball game at the University of Illinois Chicago's Credit One Arena (the "West Basketball Photograph"). A copy of Mellin's Instagram post publishing the West Basketball Photograph is attached hereto as Exhibit 1.

11. Shortly after Mellin published the West Basketball Photograph to his Instagram account, Defendant copied the photograph without Mellin's authorization and published the unauthorized copy on Defendant's Instagram Account. A copy of Defendant's Instagram post

including Defendant's unauthorized copy of the West Basketball Photograph is attached hereto as Exhibit 2.

12. Defendant's Instagram post incorporating the West Basketball Photograph received over 230,000 "Likes" on Instagram, indicating that it was viewed by at least 230,000 users.

13. Defendant's Instagram post incorporating the West Basketball Photograph included a mention of Mellin's Instagram account, "@joshuamellin".

14. Defendant made no attempt to obtain permission or authorization from Mellin before making and publishing its unauthorized copies of the West Basketball Photograph.

15. Shortly after discovering Defendant's Instagram post incorporating the unauthorized copy of the West Basketball Photograph, Mellin sent an email to Defendant demanding that Defendant remove the infringing Instagram post and that Defendant cease making unauthorized copies of Mellin's photographs.

16. Defendant's Instagram post incorporating the unauthorized copy of the West Basketball Photograph remained live for over 24 hours after Mellin sent his email to Defendant demanding that the post be removed.

17. On February 22, 2022, Mellin took three additional photographs of a Kanye West concert in Miami, Florida (the "West Concert Photographs"), and published those photographs to his Instagram account. A copy of Mellin's Instagram posts of the West Concert Photographs is attached hereto as Exhibit 3.

18. Shortly after Mellin posted the West Concert Photographs to his Instagram account, Defendant made unauthorized copies of each of the three West Concert Photographs and posted them to Defendant's Instagram account. A copy of Defendant's Instagram posts

incorporating the unauthorized copies of the West Concert Photographs is attached hereto as Exhibit 4.

19. Defendant made no attempt to obtain permission or authorization from Mellin before making and publishing its unauthorized copies of the West Concert Photographs.

20. Defendant's February 2022 acts of infringement were the latest of several instances in which Defendant published unauthorized copies of Mellin's photographs.

21. On May 18, 2022, the Acting Register of Copyrights issued a group registration to Joshua Mellin for the West Basketball Photograph and West Concert Photographs, Registration No. VA0002300363.

COUNT I – COPYRIGHT INFRINGEMENT

22. Mellin repeats and reiterates each and every allegation of paragraphs of the Complaint 1 through 22, as if fully set forth herein.

23. Mellin is the sole owner of U.S. Copyright Registration No. VA0002300363 (the "Mellin Copyright") for his original works, the West Basketball Photograph and West Concert Photographs.

24. On information and belief, Defendant has produced, reproduced, prepared derivative works based on, distributed, and publicly displayed Mellin's work protected by the Mellin Copyright or derivatives of Mellin's protected work without his consent.

25. Defendant's acts violate Mellin's exclusive rights under the Copyright Act, 17 U.S.C. §§ 106 and 501, including Mellin's exclusive rights to produce, reproduce, and distribute copies of his work, to create derivative works, and to publicly display his work.

26. Defendant's infringement has been undertaken knowingly, and with intent to financially gain from Mellin's protected copyrighted work. Defendant has failed to exercise its right and ability to supervise persons within their control to prevent infringement, and they did so

with intent to further its financial interest in the infringement of the West Basketball Photograph and West Concert Photographs. Accordingly, Defendant has directly, contributorily, and vicariously infringed Mellin's copyrighted work.

27. Because of Defendant's infringing acts, Mellin is entitled to his actual damages and Defendant's profits attributable in an amount to be proved at trial and/or all other relief allowed under the Copyright Act.

WHEREFORE, Plaintiff demands:

A. That Defendant, its agents and servants, be enjoined from infringing Plaintiff's copyright in any manner.

B. All profits of Defendant plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or if elected at trial, statutory damages, as available under the Copyright Act, 17 U.S.C. § 101 *et seq*;

C. Attorney's fees available under the Copyright Act, 17 U.S.C. §§ 101 *et seq*.; and

D. All other such and further relief as this court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury in this action.

Date: September 30, 2022

Plaintiff Joshua Mellin

By: /s/ Brian J. Beck

One of his attorneys

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